



State of Wisconsin
2015 - 2016 LEGISLATURE

LRBs0210/1
EHS:cjs

ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 528

January 29, 2016 – Offered by Representative JACQUE.

1 **AN ACT** *to amend* 48.42 (2) (a) and 48.837 (5); and *to create* 48.41 (2) (bm) of the
2 statutes; **relating to:** the disclaimer of parental rights by a birth parent and
3 his or her appearance in court.

Analysis by the Legislative Reference Bureau

This substitute amendment provides a method by which an adult parent may disclaim his or her parental rights with respect to a child who is not an Indian child in writing as an alternative to appearing in court to consent to the termination of his or her parental rights.

Subject to certain exceptions, current law generally requires a birth parent to appear in court to consent to the termination of his or her parental rights. This substitute amendment adds an exception that allows an adult birth parent to avoid appearing in court if he or she files with the court an affidavit disclaiming his or her parental rights with respect to a child who is not an Indian child. The affidavit must comply with certain requirements, including that it must be witnessed by two individuals and notarized and must include a statement that the parent understands the effect of an order to terminate parental rights and that he or she voluntarily disclaims any rights that he or she may have to the child.

Under the substitute amendment, the affidavit containing a disclaimer of parental rights may be executed by the child's father before the birth of the child. If executed prior to the child's birth, the father may revoke the disclaimer at any time

before 72 hours after the birth of the child. The substitute amendment provides that neither parent may execute the disclaimer less than 72 hours after the birth of the child. If executed 72 hours or more after the birth of the child by either parent, or if not revoked before 72 hours after the birth of the child, the disclaimer is irrevocable unless obtained by fraud or duress. Under the substitute amendment, no action to invalidate a disclaimer, including an action based on fraud or duress, may be commenced more than six months after the affidavit was executed, except that, if the petition to terminate parental rights is granted, no action to invalidate the disclaimer may be commenced later than the time limits allowed for filing a motion for relief from a judgment or order terminating parental rights.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.41 (2) (bm) of the statutes is created to read:

2 48.41 **(2)** (bm) 1. An adult parent may consent to the termination of any
3 parental rights that he or she may have with respect to a child who is not an Indian
4 child as provided in par. (a) or (b) or by filing with the court an affidavit of disclaimer
5 of parental rights that is witnessed by 2 persons and notarized and that meets the
6 requirements under subds. 2. to 7.

7 2. All of the following apply to the disclaimer of parental rights in an affidavit
8 under subd. 1.:

9 a. Neither parent may execute the disclaimer less than 72 hours after the birth
10 of the child. The mother may not execute the disclaimer before the birth of the child.

11 b. The disclaimer, if executed by the father before the birth of the child, is
12 revocable until 72 hours after the birth of the child, as provided under subd. 8.

13 c. The disclaimer is irrevocable if executed 72 hours or more after the birth of
14 the child or if not not revoked before 72 hours after the birth of the child, unless it
15 was obtained by fraud or duress.

1 d. Except as provided in subd. 2. e. and s. 48.028 (5) (b) and (c) and (6), no action
2 to invalidate the disclaimer, including an action based on fraud or duress, may be
3 commenced more than 6 months after the date the affidavit was executed.

4 e. If the petition to terminate parental rights is granted, no action to invalidate
5 the disclaimer may be commenced later than the time limits allowed for filing a
6 motion for relief from judgment under s. 48.46 (2).

7 3. An affidavit under subd. 1. shall contain all of the following:

8 a. The name, county of residence, and age of the parent whose parental rights
9 are being terminated.

10 b. The name, age, and birth date of the child, if born.

11 c. The names and addresses of the guardians of the person and of the estate of
12 the child, if any.

13 d. A statement of whether the parent whose parental rights are being
14 terminated is or is not presently obligated by court order to make payments for the
15 support of the child.

16 e. A full description and statement of value of all property the child owns or
17 possesses.

18 f. An allegation that termination of parental rights is in the best interest of the
19 child.

20 g. The name and county of residence of the other parent, a statement that the
21 parental rights of the other parent have been terminated by death or court order, or
22 a statement that the child has no presumed father.

23 h. A statement containing the information and understandings specified in
24 subd. 4.

25 i. A statement that the child is not an Indian child.

1 4. An affidavit under subd. 1. shall contain a statement that the parent whose
2 parental rights are being terminated has been informed of and understands all of the
3 following:

4 a. His or her parental rights and duties.

5 b. The effect of an order to terminate parental rights.

6 c. That he or she voluntarily disclaims any rights that he or she may have to
7 the child, including the right to notice of proceedings under this chapter.

8 d. That the disclaimer may not be executed by either parent less than 72 hours
9 after the birth of the child or executed by the mother before the birth of the child.

10 e. That the father has the right to revoke a disclaimer in an affidavit executed
11 before the birth of the child until 72 hours after the birth of the child.

12 f. That the disclaimer is irrevocable if the affidavit is executed 72 hours or more
13 after the birth of the child or if not not revoked before 72 hours after the birth of the
14 child, unless it was obtained by fraud or duress.

15 g. That no action to invalidate the disclaimer, including an action based on
16 fraud or duress, may be commenced more than 6 months after the date the affidavit
17 was executed, except that, if the petition to terminate parental rights is granted, no
18 action to invalidate the disclaimer may be commenced later than the time limits
19 allowed for filing a motion for relief from judgment under s. 48.46 (2).

20 5. An affidavit under subd. 1. may contain any of the following:

21 a. A waiver of process in a petition for termination of parental rights or a
22 petition for termination of parental rights joined with a petition for adoption.

23 b. If a guardian has not been appointed under s. 48.977, the nomination of an
24 individual to serve as guardian of the child and the individual's address.

1 6. A copy of the affidavit shall be provided to the parent at the time the parent
2 signs the affidavit.

3 7. The affidavit may not contain terms for post-termination contact between
4 the child and the parent whose parental rights are to be terminated as a condition
5 of the disclaimer of parental rights.

6 8. To revoke a disclaimer of parental rights in an affidavit under subd. 1., the
7 father shall sign a statement revoking the disclaimer of parental rights that is
8 witnessed by 2 persons and notarized. A copy of the revocation shall be filed with the
9 clerk of court. The revocation is not valid unless it is executed and filed before 72
10 hours after the birth of the child.

11 **SECTION 2.** 48.42 (2) (a) of the statutes is amended to read:

12 48.42 (2) (a) The parent or parents of the child, unless the child's parent has
13 waived the right to notice under s. 48.41 (2) (bm) or (d).

14 **SECTION 3.** 48.837 (5) of the statutes is amended to read:

15 48.837 (5) ATTENDANCE AT HEARING. The child, if he or she is 12 years of age or
16 over, and each petitioner shall attend the hearing on the petition under sub. (2). The
17 child, if he or she is 12 years of age or over, and each parent having custody of the child
18 shall attend the hearing on the petition under sub. (3), except that a parent who has
19 consented to the termination of his or her parental rights in writing under s. 48.41
20 (2) (b), (bm), or (d) is not required to attend the hearing. If the parent who has custody
21 of the child consents and the court approves, the proposed adoptive parents may be
22 present at the hearing on the petition under sub. (3). The court may, for good cause,
23 waive the requirement that the child attend either of the hearings.

24 **(END)**